

Message

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To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips 7/17/2019

Daily News Clips
July 17, 2019

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Air

Politico Pro

EPA releases latest inventory of U.S. air pollution

<https://subscriber.politicopro.com/article/2019/07/epa-releases-latest-inventory-of-us-air-pollution-3598665>

Kelsey Tamborrino

EPA today released its annual air trends report that tracks air quality across the U.S. since the implementation of the Clean Air Act.

The report found some U.S. areas were not meeting the national standards for air quality, with the number of days reaching "unhealthy" levels for sensitive groups hitting 799 days in 2018 — up from 721 days in 2017 and the lowest point of 598 days in 2014. But it also showed combined emissions of six common pollutants dropped by 74 percent from 1970 through 2018, while energy use and population increased.

"The data that we're releasing today shows that with sensible policies we can continue to protect and improve our environment without hampering our economy," acting Assistant Administrator for the Office of Air and Radiation Anne Idsal said on a call with reporters.

Environmentalists questioned the administration's presentation. John Walke, clean air director with the Natural Resources Defense Council, wrote on Twitter that the focus on long-term trends amounts to "desperate spin" to take credit for past administration's actions and "ignore failures & rollbacks by Trump."

EPA data show that while overall concentrations of air pollutants have decreased, there were some increases in 2018, like in the annual concentration of PM 2.5.

"We're going to continue to work very closely with those states, local governments and tribes to further improve air quality across the entire country, and we can certainly do this while improving regulatory certainty by protecting both public health and allowing businesses to continue to grow," EPA's Idsal said.

The agency, however, attributed the increases in PMs to natural occurrences, like wildfires or cold snaps, and noted it is difficult to compare a single year of measures to another year. EPA declined to answer a question about the role climate change played in those events.

Coal Ash

E&E News

White House reviews more disposal regs

<https://www.eenews.net/greenwire/2019/07/17/stories/1060752199>

Sean Reilly

The White House's regulatory shop has completed a standard review of another set of proposed changes to EPA's 2015 coal ash disposal regulations.

After receiving the draft "Phase 2" amendments from EPA in May, the Office of Information and Regulatory Affairs wrapped up the review Monday, according to a government tracking website.

While the details had not been made public as of this morning, EPA intends to address two provisions that were sent back to the agency by the U.S. Court of Appeals for the District of Columbia Circuit in a ruling last August, according to a summary. Agency officials are also pursuing additional "targeted changes" to the original regulations and plan to seek public feedback on other issues, the summary said.

Coal ash, the residue produced by coal-fired power plants, amounts to one of the nation's largest waste streams. Although EPA officially classifies it as nonhazardous, the agency has acknowledged that coal ash may contain lead and other toxics that leach out of landfills and storage ponds at "levels of concern."

An initial round of amendments to the 2015 regulations made final last year is entangled in litigation brought by environmental groups before the D.C. Circuit.

In last August's ruling, the court had branded significant parts of the 2015 regulations as unlawfully weak and ordered EPA to rework them. Almost a year later, the agency has not released any proposals for meeting the court's concerns.

EPA Staff

Bloomberg Environment

Lawyer, Biochemist Swaps Industry Job for EPA's Chemicals Office

<https://news.bloombergenvironment.com/environment-and-energy/lawyer-biochemist-swaps-industry-job-for-epas-chemicals-office>

Pat Rizzuto

David Fischer, an attorney who formerly worked for the American Chemistry Council, is joining the EPA as deputy assistant administrator in the Office of Chemical Safety and Pollution Prevention, according to an agency announcement obtained by Bloomberg Environment.

Fischer will hold a post previously held by Nancy Beck, who also worked with the chemistry council before joining EPA in May 2017. She recently left for a post in the White House.

The July 9 announcement didn't specify Fischer's start date, and the EPA didn't immediately reply to a request for comment.

Fischer, an environmental lawyer who also has a bachelor's degree in biochemistry and molecular biology, most recently served as a partner of legal and regulatory affairs at IBEX Partners LLC, a Washington-based public affairs firm located in Washington.

Prior to that, he worked for 10 years as a senior director in the American Chemistry Council, the trade association representing the majority of U.S. chemical manufacturers.

Among his tasks at the chemistry council was helping launch its Center for Chemical Safety Act Implementation—now called the Center for Chemical Safety.

The center aims to help chemical manufacturers with the Environmental Protection Agency's implementation of the 2016 overhaul of the nation's primary commercial chemicals statute, the Toxic Substances Control Act.

Fischer's career also includes a stint as director of government affairs at the American Bird Conservancy and the environmental health director at the Association of State and Territorial Health Officials, where he focused on assessing lead poisoning prevention efforts.

Fischer will join former Dow Chemical Co. executive Peter C. Wright at the EPA. The Senate confirmed Wright on July 11 to head the agency's Office of Land and Emergency Management.

Bloomberg Environment

Republicans Defend EPA's Appointments to Advisory Panels

<https://news.bloombergenvironment.com/environment-and-energy/republicans-defend-epas-appointments-to-advisory-panels>

Stephen Lee

House Republicans defended the EPA during a July 16 oversight hearing on the membership of the agency's scientific advisory committees, in the wake of a government watchdog's report criticizing the agency's efforts.

The hearing also served as a preview of a broader fight over the role of science in federal decision-making. Democrats on the House Science, Space and Technology Subcommittee on Investigations and Oversight vowed to convene more hearings on the issue in coming months.

At issue was a Government Accountability Office report from July 15, which found that the Environmental Protection Agency didn't always follow ethics rules when vetting members of its scientific advisory committees. The agency disputes the conclusions.

Rep. Mikie Sherrill (D-N.J.), the subcommittee's chair, said the Trump administration has been trying to flush out longstanding advisory committee members with strong scientific credentials in favor of industry representatives.

But Rep. Ralph Norman (R-S.C.), the panel's ranking member, said the imbalance on many of EPA's advisory committees favors environmentalists, not business interests.

In 2017, he said, 77 percent of the members on the Science Advisory Board—EPA's largest advisory committee—represented academia.

Hearing witness J. Alfredo Gomez, a director of the GAO's natural resources and environment team and the report's lead author, declined to respond to Norman's questions about whether those ratios are appropriate, saying that issue wasn't part of his team's investigation.

Also during the hearing, Rep. Roger Marshall (R-Kan.) said Democrats had staged the hearing merely to criticize President Donald Trump's June 14 executive order on evaluating the role of federal advisory committees.

But EPA would only have eliminate two of its 22 advisory committees to comply with that order, because the order only requires agencies to cut one-third of their discretionary committees, not their congressionally mandated ones, Marshall said.

Plans to Comply

Rep. Eddie Bernice Johnson (D-Texas), chair of the full committee, sent a letter to EPA and other agencies July 12 asking how they plan on complying with Trump's executive order.

A Johnson spokeswoman told Bloomberg Environment, "We don't want to see any valuable [federal advisory committees] disbanded, but we know that there are committees out there that are redundant."

The GAO report found that EPA staff didn't appropriately justify why they recommended certain candidates to the Science Advisory Board and Clean Air Scientific Advisory Committee. EPA officials told GAO investigators they didn't have written justifications because management asked for briefings instead.

"EPA management then decided whom to appoint after reviewing the entire list of personnel nominated for membership—not a short-list of staff-recommended candidates, as called for by EPA's handbook," the report found.

In response, EPA spokesman Michael Abboud told Bloomberg Environment the agency "has already provided GAO its thorough explanation on their conclusion that the Agency did not follow its own policy—the assertion is incorrect and should be removed from the report."

Forbes

Government Watchdog Fears EPA's New Climate Scientists Are Not Vetted And Have Conflicts of Interest

<https://www.forbes.com/sites/kensilverstein/2019/07/17/government-watchdog-fears-epas-new-climate-scientists-are-not-vetted-and-have-conflicts-of-interest/#47b7aa162eb5>

Ken Silverstein

Last week, Donald Trump delivered a televised address about how his environmental policies had made the United States a cleaner place to live. This week, however, a government watchdog agency is rebuking his administration, saying that the scientists it had appointed to EPA boards may have conflicts of interest because they are industry-funded.

Devaluing science is a strategic move by the Trump administration to ease regulations and allow companies more environmental latitude. But at what cost? While industry may want fewer constraints, it generally does not deny the role that sound science must play on policymaking. Being eco-minded, in fact, is smart business and something that consumers are demanding.

"EPA also did not consistently ensure that members appointed as special government employees — who are expected to provide their best judgment free from conflicts of interest and are required by federal regulations to disclose their financial interests—met federal ethics requirements," says the report issued by the Government Accountability Office, or GAO.

The watchdog makes specific reference to the EPA's Science Advisory Board and Clean Air Scientific Advisory Committee. The GAO says that the number of academic scientists — who receive no money from regulated industries — dropped by 27% in year one of the Trump administration and by 45% in year two, both for the Science Advisory Board.

Under former EPA Administrator Scott Pruitt — forced to resign because of ethics complaints — scientists receiving research grants from the agency were precluded from sitting on its boards. That has included hundreds of independent scientists employed by universities but it has not barred scientists employed by oil and natural gas companies.

Critics said that the move has had the practical effect of purging independent scientists and replacing them with those who get their paychecks from fossil-fueled companies. While most such companies want greater leeway, many are now acclimating to running their businesses in a carbon-constrained world — one where their shareholders are demanding greater transparency.

Due Diligence

Berkshire Hathaway Energy, Calpine Corp., Exelon Corp., PG&E Corp., Royal Dutch Shell and Tesla are supportive of mandated carbon cuts. Successful organizations, in fact, not only stand by their shareholders but they also seek to satisfy their communities, customers and employees.

“This (GAO) report shows that the Trump administration rigged influential advisory boards to favor its polluter backers,” Senator Sheldon Whitehouse said, D-R.I., who is on the Environment and Public Works Committee. “In the process, they also slowed down the work of the committees, delaying key decisions on whether to regulate potentially dangerous environmental hazards.”

The courts have said that federal agencies should consider all known scientific evidence -- necessary for the incorporation of “best available technologies.”

For its part, the Trump administration told several news organizations that it has doubled the size of the staff involved in trying to weed out potential conflicts. Their goal, it said, was to assure compliance with disclosure rules — hard to believe, given that “lax enforcement” in the last two years has led to 15% more days with unhealthy air, says the Associated Press.

EPA’s role is to protect public health and the environment. While both Republican and Democratic administrations have worked to streamline rules, none until now has sought to install former lobbyists from the fossil fuel industry as the top regulators. That’s the ultimate conflict of interest.

To that end, Trump plans to create a climate commission to combat his own administration’s findings — the ones that conclude manmade CO2 is a threat to the environment and to the economy. The panel would be composed of a who’s-who of industry-backed scientists. Critics say that the panelists are considered outside the mainstream by the globe’s mostly highly-regarded climate experts.

Trump is running for re-election on a platform of white nationalism and anti-socialism. But yet the president has no problem passing along the external costs of extracting minerals onto others, which includes those associated with cleanups and health maintenance: Moody’s Analytics just released a report finding that unmitigated pollution will cost \$54 trillion in 2100 under a warming scenario of 1.5 degrees Celsius and \$69 trillion under a warming scenario of 2 degrees Celsius.

Harvard University, meanwhile, concluded in 2018 that the cumulative effect of the president’s environmental policies will lead to 80,000 premature deaths. It added that the primary beneficiaries of reduced regulations are corporate shareholders — not the American workforce, or dislocated whites.

The Trump administration has politicized scientific research in an effort to coalesce the president’s base, all to win re-election. But the role of any chief executive is not to assure their own survival but rather, that of the entity they are overseeing. Eliciting research from independent scientists is crucial to that effort — even if their views are in direct conflict with those held by the chief administrator. The GAO is now raising a ‘red flag’ and the American people will be demanding accountability.

POLITICO PRO

EPA hires former ACC Lawyer for chemical safety office

<https://subscriber.politicopro.com/article/2019/07/epa-hires-former-acc-lawyer-for-chemical-safety-office-3599158>

Annie Snider

The Trump administration has tapped a former American Chemistry Council lawyer for EPA's chemical safety office.

David Fischer began July 9 as deputy assistant administrator for the Office of Chemical Safety and Pollution Prevention, a post previously held by Nancy Beck, according to an EPA staff announcement. His hiring was first reported by Bloomberg BNA.

An environmental attorney with a bachelor's degree in biochemistry and molecular biology, Fischer spent a decade at the American Chemistry Council in various positions, including in the office of general counsel. Most recently he has been a partner for legal and regulatory affairs at the public affairs firm IBEX Partners LLC.

Earlier in his career, Fischer worked for the Association of State and Territorial Health Officials and as director of government affairs for the American Bird Conservancy.

Fischer's hiring comes after Beck, a former ACC scientific expert, left EPA for a position at the White House National Economic Council, and as the chemical safety office is releasing draft risk evaluations for the first ten chemicals being re-evaluated under the updated Toxic Substances Control Act.

GAO

E&E News

Democrats pounce following GAO report on advisory panels

<https://www.eenews.net/eedaily/2019/07/17/stories/1060749801>

Sean Reilly

A Government Accountability Office report yesterday gave Democrats fresh ammunition to go after how EPA has been run under President Trump.

EPA officials insist that they acted properly in sidestepping standard procedures to fill a host of vacancies on two influential advisory committees.

But they failed to offer a rationale for that decision to congressional auditors, the lead author of the GAO report told lawmakers.

"They didn't justify it to us," J. Alfredo Gomez told members of the Science, Space and Technology Committee in response to questions. "The explanation was just that they deviated and came up with an alternative process. We don't understand why."

The report found that EPA leaders skirted written agency guidelines in naming 20 people to the Science Advisory Board and Clean Air Scientific Advisory Committee in fiscal 2018 (Greenwire, July 15).

While then-Administrator Scott Pruitt and other officials typically would have relied on a short list of recommendations from career staff, they instead opted for briefings on the candidates and then made their choices from the full slate of nominees.

One result was an unusually high influx of new members with industry ties. The current chair of CASAC, for example, was nominated by the U.S. Chamber of Commerce (Greenwire, Oct. 18, 2018)..

'Transparency and integrity'

For committee Democrats, the administration's gambit furnished more evidence of what one member called an "attack on science" throughout government.

"This undermines the transparency and integrity we expect from these important expert panels," Rep. Mikie Sherrill (D-N.J.) said.

Sherrill, who chairs the Investigations and Oversight Subcommittee, jointly presided over the 90-minute hearing with Rep. Lizzie Fletcher (D-Texas), chairwoman of the Environment Subcommittee.

Largely seconding their concerns were three other witnesses who have played various roles at EPA over the years.

"EPA science is in trouble," said Thomas Burke, an Obama administration science adviser now on the public health faculty at Johns Hopkins University.

"The fundamental mission of protecting health and the environment has given way to a focus on deregulation. How else can you explain the rollbacks that we've seen that may result in thousands of increased deaths and illnesses each year?"

The integrity of the science used by EPA is "diminished and tarnished" when the independence of the agency's advisory committees is undercut, said Deborah Swackhamer, a retired University of Minnesota professor who previously chaired the Board of Scientific Counselors, which advises EPA on its research programs.

Swackhamer was stripped of that position with no official explanation almost two years ago. After Pruitt declined to reappoint dozens of other members, the board's work was disrupted for the better part of two years, Swackhamer indicated.

Under a written directive issued in October 2017, Pruitt had also barred EPA grant recipients from serving on advisory committees because he said he wanted to preserve their objectivity. But there was no such prohibition for people with industry connections, a point that Democrats repeatedly underscored during the hearing.

Another source of concern was a recently announced White House executive order requiring EPA and other agencies to cut at least one-third of their advisory committees by the end of September. As many as 14 of EPA's 22 federal advisory committees could be vulnerable under one interpretation of that order (Greenwire, June 17).

But Rep. Roger Marshall (R-Kan.), the ranking member on the Environment Subcommittee, downplayed the potential impact, saying the White House order applied only to "discretionary" committees created by the agency without the backing of a statute or executive order. By that reading, Marshall said, EPA needs to eliminate only two panels to comply.

Although Pruitt's ban on committee service by agency grant recipients nominally applied to all 22 panels, he primarily targeted SAB, which offers outside expertise to EPA on a variety of topics, and CASAC, which performs a similar role during legally required reviews of the ambient air quality standards for ozone, particulate matter and four other pollutants.

Rep. Ralph Norman (R-S.C.), ranking member of the Investigations and Oversight Subcommittee, objected that the hearing focused on just those two.

"My colleagues on the other side of the aisle seem to be using this opportunity as a thinly veiled cover to simply attack the EPA and this administration's effort to improve the selection process," he said.

Nonetheless, as Sherrill noted, Republicans did not invite any witnesses of their own. No one from EPA was asked to testify, she added in a brief interview afterward. Agency officials have contested GAO's finding, saying that Pruitt had the discretion to change the selection process for those two panels.

IG investigation

The hearing also afforded Democrats an opportunity to revisit an issue broached some two years ago after Swackhamer last appeared before the panel.

Soon after, several senior members had asked EPA's inspector general to investigate whether a top EPA aide had pressured Swackhamer into giving misleading testimony (Greenwire, June 17, 2017).

Rep. Don Beyer (D-Va.), who was among those requesting the inquiry, yesterday said he was "stunned" after Swackhamer said the inspector general has yet to contact her. It was unclear whether the Office of Inspector General has undertaken any probe.

Asked for comment later, spokeswoman Jennifer Kaplan in an email said the inspector general's office has not announced any work specific to Swackhamer and does not confirm nor deny the existence of investigations "because they look into potential criminal violations."

Law

E&E News

Justice Stevens leaves powerful environmental legacy

<https://www.eenews.net/greenwire/2019/07/17/stories/1060752213>

Ellen Gilmer

Retired Supreme Court Justice John Paul Stevens, who died yesterday, leaves behind a robust environmental legacy that affects federal climate action and agency litigation to this day.

The late jurist, who was on the bench from 1975 to 2010, authored two of the most important opinions in environmental law: *Massachusetts v. EPA* and *Chevron v. Natural Resources Defense Council*.

The first affirmed EPA's authority to regulate greenhouse gas emissions. The second established the oft-cited legal precedent directing judges to defer to an agency's understanding of an ambiguous law.

"His environmental legacy is huge," UCLA law professor Ann Carlson said.

Stevens died yesterday in Fort Lauderdale, Fla., after having a stroke the day before, according to the Supreme Court press office. He was 99.

While mourning the justice's death, environmental law experts extolled the impacts of his opinion in *Massachusetts v. EPA*, the 2007 decision that teed up years of EPA climate policies.

"Through trenchant analysis anchored in statutory text and science, Justice Stevens authored the most important environmental case in American history," Environmental Defense Fund lawyer Vickie Patton said.

The decision not only addressed the dispute about EPA's authority over greenhouse gases but also affirmed Massachusetts' right to bring the case and ordered the agency to better explain itself if it chose not to regulate emissions.

Carlson noted that the Supreme Court's ruling in the case laid a foundation the federal government has been building on ever since. Obama-era regulations targeting emissions from power plants, oil and gas drilling, and automobiles all stem from that ruling.

Robert Percival, head of the environmental law program at the University of Maryland, credited Stevens with zeroing in on what it would take to bring then-Justice Anthony Kennedy into the majority: an emphasis on legal precedent establishing states' rights to sue in the case.

But he didn't side with environmentalists in every case, Percival said.

"He wasn't an automatic vote one way or the other," he said. "He tended part in later years to side with the environmental side, but it wasn't a matter of being based on ideology; it was based on his reading of the statute and his willingness to give deference to an agency if it's adopted a reasonable regulation."

'He didn't mind digging into complex statutes'

When Republican President Ford nominated Stevens to the Supreme Court in 1975, the Chicago native's record on environmental issues was largely unknown.

The World War II veteran had worked for years as an antitrust lawyer and then as a judge on the 7th U.S. Circuit Court of Appeals. He wore a bow tie and was well liked in legal circles.

But he had big shoes to fill on conservation issues, taking the former seat of Justice William Douglas, an environmental firebrand and avid outdoorsman who retired in 1975.

The Senate confirmed Stevens unanimously, and the justice eventually became known as a liberal stalwart and a friend to the environment. Vermont Law School professor Pat Parenteau said Stevens ultimately eclipsed even Douglas as the most influential member of the court on environmental law.

Case Western Reserve University law professor Jonathan Adler said Stevens took the time to explore the on-the-ground environmental impacts of the Supreme Court's decisions, a rarity among the justices.

"He also may have been the last justice to focus on the distinctly environmental aspects of environmental cases," Adler said. "Whereas most of the justices tend to approach environmental cases as administrative law cases or statutory interpretation cases, Justice Stevens would highlight the environmental context and consequences of environmental cases."

That was clear in Stevens' dissent in *Rapanos v. United States* in 2006, Adler said. In the split Clean Water Act case, the justice recounted the damage done to three wetlands sites.

"Prior to their destruction, the wetlands at all three sites had surface connections to tributaries of traditionally navigable waters," he wrote, then detailing the connections and the benefits of such wetlands.

Sean Donahue, who often represents green groups in Supreme Court litigation, said Stevens had a knack for environmental cases, thanks to his interest in science and affinity for digging into technical details of cases.

"He was sympathetic to the task of governing a modern massive diverse republic in a time of rapid change, of the need to apply the law so as to accommodate to new realities," Donahue said. "And he didn't mind digging into complex statutes."

Percival was a clerk for then-Justice Byron White from 1979 to 1980 and recalled that Stevens was seen as a quirky junior justice on the court, as he insisted on having only two clerks instead of the typical four and wrote all his first opinion drafts himself.

Agency deference, endangered species

Stevens' respect for agency expertise won the day in *Chevron*, the landmark 1984 decision.

The ruling was seen as a bitter defeat for NRDC and other environmentalists at the time, but the resulting precedent is now celebrated in those circles.

The case dealt with a Reagan-era air permitting policy that environmentalists viewed as too industry-friendly. Led by Stevens, the Supreme Court ultimately sided with the government, finding that EPA was entitled to deference on its interpretation of the relevant part of the Clean Air Act.

The decision is often recognized as the most influential administrative law case ever — setting limits on judges' ability to second-guess many agency decisions.

Stevens' respect for agency expertise, paired with his concern for the purpose of statutes, resulted in numerous rulings favoring strong environmental protections, said University of California, Berkeley, professor Dan Farber, who clerked for Stevens early in his career.

"He always believed that the purpose of the law was important, not just using a dictionary to find out what individual terms mean, and the purposes of the environmental statutes were very strongly protective of the environment, and so I think he gave that a lot of weight in his decisions," Farber said.

Stevens also authored *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, a 1995 case adopting a broad view of Endangered Species Act habitat protections.

Lois Schiffer, who was the top environmental lawyer at the Justice Department during that time, stressed the importance of the case.

"It was a very significant Supreme Court decision because using his thoughtfulness and integrity in his reading of statutes, he really made a decision that was essential to the protections that are afforded by the Endangered Species Act and decided it in a way that really carried out Congress' intent to be protective of species, including their habitat," she said.

Between *Sweet Home* and *Massachusetts*, "Justice Stevens is responsible for two of the more aggressive embraces of federal regulatory authority over environmental concerns," Adler said.

Other notable Stevens opinions include *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, another important case that found a government agency did not have to compensate landowners for an alleged regulatory taking after temporarily freezing residential development in the Lake Tahoe area.

And in a loss for environmentalists in 1989, Stevens authored the unanimous decision in *Robertson v. Methow Valley Citizens*, which found the National Environmental Policy Act does not impose a substantive duty on agencies to mitigate project impacts.

Legislation

POLITICO PRO

Murkoski not giving up on EPA-Interior bill

<https://subscriber.politicopro.com/article/2019/07/murkowski-not-giving-up-on-epa-interior-bill-3598827>

Anthony Adragna

Sen. [Lisa Murkowski](#) (R-Alaska), chairman of the Appropriations Interior and EPA subcommittee, still hopes to mark up and advance her title of the annual government funding package, though she acknowledges the task will be challenging.

"We have been preparing ourselves for the moment we have that opportunity to surge it up, we're ready to go," she told reporters. "Is it going to be a challenge? Absolutely. Is it impossible? Nothing is impossible."

Speaker [Nancy Pelosi](#) said Tuesday that Congress and the White House are [making progress](#) at reaching an agreement on a budget deal. The House already passed its EPA-Interior title as part of a second spending minibuss [H.R. 3055 \(116\)](#) earlier this summer.

POLITICO PRO

Offshore drilling, ANWR bills get House votes in September

<https://subscriber.politicopro.com/article/2019/07/offshore-drilling-anwr-bills-to-get-house-votes-in-september-3598355>

Anthony Adragna

Legislation that would once again bar oil and gas drilling in the Arctic National Wildlife Refuge [H.R. 1146 \(116\)](#) and several bills that would restrict offshore drilling around the country's coasts will receive House floor consideration after Labor Day, Majority Leader [Steny Hoyer](#) said today.

"I will bring 3 bills to the House Floor the week of Sept. 9 to protect the Arctic Refuge & block the Admin's efforts to expand offshore drilling," Hoyer [tweeted](#).

House Natural Resources Committee leaders had been pushing for the bills to be considered prior to the chamber leaving for the month of August.

The ANWR legislation cleared committee several months ago, while the panel [advanced](#) bills placing a permanent moratorium on drilling in the federal waters in the Eastern Gulf of Mexico [H.R. 205 \(116\)](#) and blocking offshore drilling along the Atlantic and Pacific Coasts in mid-June [H.R. 1941 \(116\)](#).

PFAS

Bloomberg Environment

Divisions Arise Over How to Classify Harmful Nonstick Chemicals

<https://news.bloombergenvironment.com/environment-and-energy/divisions-arise-over-how-to-classify-harmful-nonstick-chemicals-50>

Chuck McCutcheon

How quickly the government can regulate nonstick chemical contamination will come down to how lawmakers and regulators classify those chemicals, Pat Rizzuto writes.

The decision to lump per- and polyfluoroalkyl substances (PFAS) together—or split them into smaller groups of related compounds—has set off a debate between communities dealing with contamination against the chemical industry. Communities want the chemicals to be addressed together, while industry says that approach is scientifically inaccurate and unfeasible.

Scientists have varying opinions. Some say certain fluoropolymers used to make outdoor clothing and other products shouldn't be lumped in with other PFAS for legislative or regulatory purposes, while others aren't convinced that it's appropriate to exclude fluoropolymers from the larger group of PFAS.

Justice John Paul Stevens, 1920-2019

John Paul Stevens, who was appointed to the U.S. Supreme Court by a Republican president only to become a leading liberal voice on presidential powers, the death penalty and individual rights, has died. He was 99.

Stevens was well-known among environmental law practitioners for his majority opinion in the landmark 1984 case *Chevron v. Natural Resources Defense Council*, a case that grew out of a dispute over the EPA's definition of a "stationary source" of pollution under the Clean Air Act.

The case gave rise to the "Chevron deference" doctrine, under which federal courts will defer to an agency's "permissible construction" when interpreting a statute on a point of law that Congress didn't directly address. The case is among the most cited in environmental law litigation.

Scaled-Back Energy Jobs Bill Comes Before House Panel

A sweeping job-training program for minorities and other underrepresented groups in the energy sector that a House committee will consider today has been dramatically scaled back, Tiffany Stecker writes.

The authorization levels for H.R. 1315 have been significantly pared down to address GOP concerns. Illinois Democrat Bobby Rush's legislation would direct the Energy Department to carry out a nationwide program to improve education and training for energy-related jobs, focusing on minorities, women, veterans, the disabled, and unemployed workers.

The bill is one of 11 energy and cybersecurity-related bills the House Energy Commerce Committee will consider at the day-long markup. Others include H.R. 2088, which would reauthorize the Energy Efficiency and Conservation Block Grant Program to provide \$3.5 billion annually through fiscal year 2025; H.R. 2041, which would set aside \$350 million per year for the Weatherization Assistance Program through fiscal year 2024; and H.R. 3432, which would add new mandates to reduce pipeline explosions and provide more funding for the Pipeline and Hazardous Materials Safety Administration.

Heritage Federalism Event Draws Big GOP Names

The Heritage Foundation holds a livestreamed symposium on federalism with an extensive GOP cast.

Speakers include EPA Administrator Andrew Wheeler, Interior Secretary David Bernhardt, and Mick Mulvaney, the acting White House chief of staff.

Others scheduled include Senate Homeland Security and Government Affairs Committee Chairman Ron Johnson (R-Wis.); Utah Rep. Rob Bishop, the House Natural Resources Committee's ranking Republican; and Arizona Attorney General Mark Brnovich.

What Else We're Watching

The U.S. Energy Association's Advanced Energy Technology Forum features remarks from Energy Secretary Rick Perry. The Senate environment committee looks at electric battery production and waste. Representatives from Avicenne Energy US and Navigant Consulting will testify.

A Senate Democratic climate panel will hear from the mayors of Atlanta, Honolulu, St. Paul, Minn., Pittsburgh, and Portland, Ore.

Daily Rundown

Top Stories

Trump Rule to Ease Auto Mileage, Emissions Standards Delayed

The Trump administration's rule to weaken Obama-era automobile efficiency requirements has been delayed until at least September, according to a person familiar with the matter.

Flood Insurance Backers Unveil New Bid to Revamp, Extend Program

A bipartisan band of lawmakers unveiled a new bid to rescue an about-to-expire federal flood insurance program with a bill that would put a 9 percent cap on annual premiums paid by homeowners.

Energy/Natural Resources

Senate Panel Advances 22 Energy Bills

Bipartisan bills supporting advanced nuclear reactors and expediting the export of small amounts of liquefied natural gas were among 22 pieces of energy-related legislation approved by the Senate Energy and Natural Resources Committee and advanced to the full Senate.

More Funding Needed to Electrify Buses, Trucks, Congress Told

Congress should do more to encourage electrification of buses and heavy-duty trucks, including setting up grant programs and providing money in any long-term infrastructure package, the head of an electric bus company and environmental advocates told lawmakers.

Environment

EU Designates GenX, Other Chemicals as High Concern

A European Union move to designate four chemicals—including PFOA substitute GenX—as substances of very high concern could affect companies including BASF SE, Chemours Netherlands BV and Huntsman Advanced Materials LLC.

Plains Beats Investor Suit Over 2015 California Oil Spill

Plains All American Pipeline LP is free of a securities suit accusing it of misleading investors about a 2015 oil spill off the California coast, the Fifth Circuit said.

Bloomberg Environment

Lump or Split: Lawmakers, Scientists Wrestle With PFAS Chemicals

<https://news.bloombergenvironment.com/environment-and-energy/lump-or-split-lawmakers-scientists-wrestle-with-pfas-chemicals>

Pat Rizzuto

How quickly the government can regulate contaminating nonstick chemicals will come down to whether lawmakers and regulators consider the chemicals individually, in small groups, or as a single group.

The chemicals, per- and polyfluoroalkyl substances, or PFAS, number in the hundreds or thousands, depending on who is counting and what methodology is used.

The decision to lump these emerging contaminants together—or split them into smaller groups of related compounds—has set off a debate between communities dealing with contamination against the chemical industry.

Communities want the chemicals to be addressed together, while industry says that approach is scientifically inaccurate and unfeasible. Scientists are developing strategies that could be used to group the chemicals or deal with all of them at once.

Members of Congress are considering bills and discussing future ones that would direct the Environmental Protection Agency to manage a couple of the chemicals, all of them, or use some still-undefined basis for regulation. The issue is also being hotly debated in various states.

Those laws could affect not only companies making PFAS, but also virtually any manufacturer. Tiny amounts of the chemicals are in thousands of industrial and consumer goods.

Legislative Strategies

In arguing for dealing with the chemicals as one group, communities dealing with contamination in the air, soil, food, or drinking water point to research that has found many PFAS can linger centuries in the environment, circulate for years in people's blood, and be transferred to newborns through breast milk.

They also cite studies showing the two most studied members of the chemical group are linked to cancer, birth defects, and other problems.

Some bills, including the PFAS Release Disclosure Act (S.1507), which Sen. Shelly Moore Capito (R-W.Va.) introduced, distinguish among the chemicals.

Her bill would require companies to disclose their environmental releases of some specific PFAS to the EPA and describe criteria other PFAS would have to meet to be disclosed.

Other legislative measures, such as amendment that Rep. Debbie Dingell (D-Mich.) introduced that was included in the National Defense Authorization Act (H.R. 2500) that the House passed July 12, treat all PFAS as one group of chemicals.

The defense bill would require the EPA to classify all PFAS as hazardous substances under the Superfund law within one year of the act becoming law. It's unclear whether that PFAS provision, absent from the Senate version of the act, will survive a bicameral conference committee on the defense bill.

The U.S. Chamber of Commerce objects to the the one-group approach illustrated by Dingell's amendment and a related Senate bill. Capito's approach has some merit but still may not sufficiently distinguish between types of PFAS, it said in a May 19 letter.

Rep. Paul Tonko (D-N.Y.), chairman of the House Energy and Commerce Committee panel with jurisdiction over the EPA and dozens of PFAS bills, backs the single-class approach, according to a senior Tonko aide. But, he's open to discussions on potential alternatives, the aide said.

Decision Context

The choice of whether to lump or split the PFAS group depends on the goal of the decision, Gina Solomon, a physician and professor at the University of California, San Francisco.

If reduced public exposure to the chemicals is the goal, a single-group approach may be best, she said.

Regulators also could make a science policy decision, said Solomon, who served as the deputy secretary for science and health at the California Environmental Protection Agency from 2012 to 2017.

For example, they could treat all PFAS as a group to spur companies to release toxicity and exposure information that the regulators could use to make distinctions among the group, she said.

But if an agency is trying to determine the health risks that a particular exposure scenario caused, then the agency would need more information about the specific type of PFAS, she said.

August Meeting

Scientists from around the world will explore different approaches to grouping PFAS during an Aug. 12-15 Society of Environmental Toxicology and Chemistry (SETAC) meeting in Durham, N.C.

The EPA and National Toxicology Program will soon release data from 28-day studies exposing animals to dozens of PFAS chemicals, said Philip Goodrum, a senior science adviser with Integral Consulting Inc.'s Fayetteville, N.Y. office, who is planning to attend.

Over the next year, that information should help scientists figure out groupings based on the chemicals' ability to interact with certain parts of the body, potency, or other characteristics, he said.

'Fluoropolymers'

Another grouping strategy could be used now, said Barbara J. Henry, a toxicologist with W.L. Gore & Associates, a manufacturer in Newark, Del.

Gore uses fluoropolymers, a type of PFAS, to make hundreds of products such as industrial cables and gaskets that can withstand solvents and extreme heat; lightweight, water-resistant outdoor clothing; air, gas, liquid and particle filters; and more than 45 implanted medical devices.

Most commercially used fluoropolymers meet internationally accepted criteria for being "low-concern" compounds, said Henry and her colleague Joe Carlin, a chemical engineer who oversees Gore's supply chain. They referred to criteria established by the EPA and Organization for Economic Cooperation and Development.

The criteria for being a low-concern polymer include factors like a chemical being so big that it can't get into cells and therefore can't get into the body to cause harm, Henry detailed in a SETAC journal article.

Low-concern fluoropolymers shouldn't be lumped in with other PFAS for legislative or regulatory purposes, she said.

PFAS that don't meet the low-concern criteria are used to make the fluoropolymers, Henry said.

But, Carlin said, companies and regulations could prevent those chemicals from being released into the environment.

Some companies, such as Gore, may be able to control their supply chains and purchase only carefully sourced fluoropolymers made by companies that didn't release PFAS of concern into the environment, DeWitt said. But zero emissions may not be feasible for all companies.

Lingering 1,500 Years

Other scientists aren't convinced that it's appropriate to exclude fluoropolymers from the larger group of PFAS.

Zhanyun Wang, a lecturer at the Swiss Federal Institute of Technology in Zurich, said some—but not all—fluoropolymers will meet OECD's low-concern criteria.

Industry designs some fluoropolymers to have special properties that could enable them to dissolve and get into people's bodies, Wang said.

In addition, society's use of PFAS is putting chemicals into the environment that may last 1,500 years, Jamie C. DeWitt, an associate professor with the Brody School of Medicine at East Carolina University, said.

The concept of "essential use" should be used in determining whether PFAS can be phased from specific products, DeWitt and other scientists wrote in a recent paper.

That paper divides products into three categories, based on whether their use of PFAS is

essential, such as in surgical gowns;

substitutable, such as in outdoor jackets, because alternative chemicals exist for some uses; and

nonessential, such as in sunblocks and skin creams, where substitute chemicals are available and PFAS aren't needed to protect the health, safety, or function of something vital.